

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19

AMERICAN GUARD SERVICES, INC.

Employer

and

Case 19-RC-14112

UNITED GOVERNMENT OFFICERS OF  
AMERICA, LOCAL NO. 46

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All guards employed by the Employer at the FAA air traffic control and radar defense facility located at the Boniface Gate at Elmendorf Air Force Base, Alaska; but excluding all office clerical employees, managerial employees, supervisors as defined by the Act, and all other employees.

The Employer is engaged in providing guard service to the Federal Aviation Administration's (FAA) air traffic control and radar defense center located outside the Boniface gate at Elmendorf Air Force Base in Alaska. Petitioner seeks a unit of all guards employed at the FAA facility. The Employer contends that guard lieutenant Dan Bogdanský is a statutory supervisor.

The Employer commenced providing guard service at the FAA facility in about September 2000, and is currently working on an interim contract that will expire on October 1, 2001. The Employer intends to bid on a longer-term contract.

Bogdansky reports directly to Lieutenant Dan Longacre, who works in the Federal Building and U.S. Courthouse in downtown Anchorage, where the Employer also provides guard service.<sup>1</sup> Longacre reports to Darryl Malone, the Employer's contract manager. The Federal Building is approximately three miles from the FAA facility, and Longacre visits the FAA facility once or twice a week. The record does not reveal the nature or duration of his visits. Bogdansky is considered the supervisor of the guards at the FAA facility, and he is available to them on call during the hours when he is not present at the facility.

Bogdansky is in charge of the approximately nine guards employed at the facility. He deals directly with FAA security officers and makes changes in the procedures followed by the guards in accordance with the wishes of the FAA. Such changes include matters such as changing the sign-out or identification procedures and patrolling procedures. Bogdansky does not consult with higher authority prior to making such changes. The FAA provides to Bogdansky a room with a desk. Bogdansky is the only person employed by the Employer who has access to the room.

Guards are present at the facility 24 hours a day, seven days a week. The facility gate is open from 6:00 a.m. until about 6:30 or 7:30 pm, and a guard is posted at the gate during those hours to admit FAA employees and members of the public. A second guard patrols the exterior and interior of the building. The two guards rotate gate and patrol duties with each other. During the hours when the facility is closed, both guards patrol. The building is three stories high, and covers about five acres, in addition to parking areas.

Bogdansky is on duty five days a week from 8:00 a.m. to 4:00 p.m. Two other guards are regularly on duty with him during those hours. In addition to Bogdansky, there are four full-time guards employed. There are also two who work only on weekends, and three who otherwise work part time from about 10 hours a week up to about 30 hours a week. Bogdansky schedules the guards, who normally work the same shifts week after week, and they are normally assigned to their preference as to shifts. Bogdansky is given a list of the part-time employees and the hours they are available, and fits them into the schedule. If an employee calls in sick, Bogdansky calls in a replacement, using a list. Employees cannot trade shifts with each other without Bogdansky's approval.

Bogdansky can issue verbal and written warnings. He has issued written discipline to two employees and counseled them. One such employee, Jerry Smith, was disciplined because his behavior toward the public was overly aggressive. Bogdansky changed Smith to a night shift so he would have less contact with the public. Bogdansky made the decision to switch Smith's shift without consultation with higher authority. Smith's aggressive behavior continued, however, and, as a result of a complaint from the FAA, the Employer, at a higher level than Bogdansky, decided to terminate him. The Employer has a progressive disciplinary system.<sup>2</sup>

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<sup>1</sup> Apparently Petitioner currently represents a unit of guards employed by the Employer at the Federal Building in downtown Anchorage.

<sup>2</sup> The disciplinary progression is: verbal warning, written warning, one day suspension, three day suspension, termination.

The guards are paid \$15.18 an hour, including health and welfare benefits. Bogdansky receives the same hourly pay, plus a bonus of \$100.00 per month.

Section 2(11) of the Act defines a "supervisor" as:

. . .[A]ny individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

There is no evidence or contention that Bogdansky has any authority to hire, transfer, lay off, recall, promote, discharge, or reward employees, or to adjust their grievances. Record evidence reflects that Bogdansky has authority to discipline employees, in that he can independently issue written warnings that are a step in the Employer's progressive disciplinary system. Further he assigns and directs employees in that he can change their work procedures (such as how they check in visitors at the gate) without consulting higher authority, and he schedules them. While it does not appear that scheduling normally requires any use of independent judgment, Bogdansky has independent authority to approve trading shifts by employees, and to reassign an employee to a different shift, as he did with Smith in an effort to resolve a disciplinary problem. In addition, Bogdansky is the person who is in regular contact with the Employer's customer -- the FAA -- and he is expected to direct the work force in a manner consistent with the wishes of the FAA and to implement any requested changes. I conclude that Bogdansky is required to use independent judgment in directing employees.<sup>3</sup> Moreover, Bogdansky is always on call during hours when he is not working, and is paid a bonus of \$100.00 a month. In these circumstances, I conclude that Bogdansky is a statutory supervisor and excluded from the Unit.

There are approximately 9 employees in the Unit.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during

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<sup>3</sup> "Responsible direction" does not depend on the complexity or difficulty of the work, but rather means that the alleged supervisors exercise independent judgment without consultation with higher management. -- *Phillips Industries, Inc.*, 295 NLRB 717 (1989); *Holiday Inn of Dunkirk-Fredonia*, 211 at 461 (1974)

the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by UNITED GOVERNMENT OFFICERS OF AMERICA, LOCAL NO. 46.

### **NOTICE POSTING OBLIGATIONS**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Resident Officer in Anchorage within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Anchorage Resident Office, 222 West 7<sup>th</sup> Avenue, Box #21, Anchorage, Alaska 99513, on or before July 10, 2001. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (907) 271-3055. Since the list is to be made available to all parties to the election, please furnish

a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by July 17, 2001.

DATED at Seattle, Washington this 3<sup>rd</sup> day of July, 2001.

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Paul Eggert, Regional Director  
National Labor Relations Board  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, WA 98174

177-8540-9900